Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAGALY CORREA and MIGUEL CORREA

Appeal No. 2004-1009
Application No. 09/785,382

ON BRIEF

Before WARREN, KRATZ and JEFFREY T. SMITH, Administrative Patent Judges.

KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-10 and 12-17, which are all of the claims pending in this application.

BACKGROUND

Appellants' invention relates to a hand held hair blow dryer apparatus including a brush attachment. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A hand held hair blow dryer apparatus comprising:

a linearly elongated grappling handle aligned along a base of a lateral centerline of a dryer;

a directional head extending from said handle along said lateral centerline, said directional head having an angularly disposed directional nozzle directed perpendicularly from said lateral centerline;

an air outlet port formed at a center of said nozzle and circumscribed by a peripheral rim;

said directional head supporting heating coils and enclosing said blower; and

brush attachment attached about said peripheral rim covering said air outlet port and attached to said head by brush attachment means.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Vallis	3,949,765	Apr. 13, 1976
Braulke, III (Braulke)	4,114,022	Sep. 12, 1978
Weiss	4,365,141	Dec. 21, 1982
Scivoletto	4,955,145	Sep. 11, 1990
Barr, Jr. (Barr)	5,485,931	Jan. 23, 1996
Sampson et al. (Sampson)[1]	6,364,165	Apr. 02, 2002

Claims 1 and 3-5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Vallis. Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Vallis in view of Weiss. Claim 6 stands rejected under 35 U.S.C. § 103(a) as being

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[1] Appellants have not challenged the availability of this reference as prior art under § 102(e) based on the parent application (09/488,209) filing date of January 19, 2000 and/or the earlier provisional application (60/116,407) filing date of January 19, 1999.

unpatentable over Vallis in view of Scivoletto. Claims 7 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Vallis in view of Barr and Sampson. Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Vallis in view of Braulke. Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Vallis in view of Barr, Sampson and Braulke. Claims 8-10 and 12-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Vallis.

We refer to the brief and reply brief and to the answer for a complete exposition of the opposing viewpoints expressed by appellants and the examiner concerning the issues before us on this appeal.

OPINION

Having carefully considered each of appellants' arguments set forth in the brief and reply brief, appellants have not persuaded us of reversible error on the part of the examiner. Accordingly, we will affirm the examiner's rejections for substantially the reasons set forth by the examiner in the answer. We add the following for emphasis.

Claims 1 and 3-5

Under 35 U.S.C. § 102(b), anticipation requires that the prior art reference disclose, either expressly or under the

principles of inherency, every limitation of the claim. See In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986). Appellants argue that the features listed at page 7, first full paragraph of the brief distinguish the claimed structure from the applied prior art. However, as correctly determined by the examiner (answer, page 7) several of the argued features represent limitations that can not be found in any of claims 1 and 3-5, such as the various brush diameters and wood construction argued. As for the other features argued, the examiner has correctly found that Vallis describes a hair dryer including all of the recited elements of claims 1 and 3-5 including a linearly elongated handle (10), a directional head (housing 9) extending from the handle including an angularly disposed nozzle (housing interior 11) relative to the handle centerline, an air outlet (14), heating coils (12) and blower (13) and a brush attachment (drawing figures 1-3) corresponding to the structure called for in appealed claim 1. Moreover, Vallis discloses that the brush attachment extends across the housing opening or outlet (14); that is, across the structure or rim defining the opening (see, e.g., column 1, lines 41-49 of Vallis), a brush carrier (1) that is semi-cylindrical (see column 2, lines 11-15 of Vallis), and air orifices (4) located between

brush tufts or bristles (7 and 8) as called for in dependent claim 5.

For the reasons stated above and in the answer, we determine that the examiner has presented a prima facie case of anticipation that has not been rebutted by the arguments of record. It follows that we will sustain the examiner's § 102(b) rejection of claims 1 and 3-5.

Claims 8-10 and 12-14

Regarding the examiner's § 103(a) rejection of claims 12-14 as being obvious over the teachings of Vallis, we agree with the examiner that the use of well-known materials such as wood, as recited in claims 12-14, for constructing the attachment base would have been a selection of construction material that is well within the ambit of one of ordinary skill in the art and hence prima facie obvious. This is so since one of ordinary skill in the art would have been led to employ readily available and cost effective construction materials, such as wood, with a reasonable expectation of success in so doing.

Moreover, regarding claims 8-10 and the separate § 103(a) rejection thereof, we agree with the examiner that choosing the size of the brushes in a manner so as to arrive at workable brush sizes, such as called for in claims 8-10, would have been prima

facie obvious to one of ordinary skill in the art seeking to provide brushes having desirable characteristics for brushing and styling hair. See In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980); In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Given the above and for reasons set forth in the answer, we cannot agree with appellants' generalized contention that an inappropriate standard of obviousness has been applied by the examiner. Consequently, on this record, we will sustain the examiner's § 103(a) rejection of claims 8-10 and 12-14.

Claim 2

Dependent claim 2 additionally requires that the blow dryer of claim 1 include a power cord and hook grasping means. While Vallis does not explicitly describe how the dryer blower and electric heating means thereof are powered, we agree with the examiner that one of ordinary skill in the art would have readily envisioned that the dryer handle would include a power cord extending therefrom as expressly taught by Weiss (element 33, figure 2) for use in powering a hair dryer. As for the claimed "hook grasping means," we agree with the examiner that Weiss (column 5, lines 30-32) evidences that the provision of such a grasping means for the blow dryer of Vallis would have readily

commended itself to one of ordinary skill in the art. While appellants' seemingly argue that claim 2 requires that a hook is incorporated in the power cord, we do not find that the language of claim 2 is so limiting. To the extent appellants may be suggesting that claim 2 should be interpreted as requiring a power cord with a hook grasping means incorporated therein, an interpretation with which we also disagree, we find that one of ordinary skill in the art would have recognized that the power cord could include elements, such as the bushing (34) of Weiss or loops of material either added thereto or made with the power cord itself that would function as a hook grasping means. Accordingly, on this record, we will sustain the examiner's § 103(a) rejection of claim 2.

Claim 6

Concerning dependent claim 6, we agree with the examiner that the combined teachings of Vallis and Scivoletto reasonably suggest that tethers (straps) such as taught by Scivoletto (drawing figure, element 28 and column 2, lines 56-61) are an art recognized option for securing attachments to a hair dryer, such as the brush attachment of Vallis with a reasonable expectation of success. As the examiner explains (answer, page 5), one of ordinary skill in the art would have been led to use such tethers

to achieve a snug fit. In this regard, we note that Scivoletto (column 2, lines 59-61) discloses that elastic straps (tethers) have the advantage of being adjustably sized for firmly holding a hair dryer attachment. Thus, we determine that the examiner has presented a prima facie case of obviousness with respect to the subject matter of claim 6 that has not been fairly rebutted by appellants. Consequently, we will sustain the examiner's § 103(a) rejection of claim 6.

Claims 7 and 16

Concerning the wall mounting bracket of claims 7 and 16, the examiner turns to Barr and Sampson in addition to the teachings of Vallis. Barr (column 1, lines 5-12 and the drawing figures) discloses a hair dryer caddy (mounting bracket) that includes cavities for receiving the hair dryer and attachments. The caddy may be attached to a wall. Sampson (for example, drawing figure 5) discloses that personal care devices, such as a toothbrush, may be stored in caddies that include a plug (blades) for insertion into an electrical outlet. Based on the combined teachings of the applied references, the examiner has reasonably determined that providing a wall mountable bracket for holding the hair dryer and attachments of Vallis with blades for providing an electrical outlet connection for power would have

been obvious to one of ordinary skill in the art. In this regard, we note that one of ordinary skill in the art would have recognized the storage convenience and electrical connection advantages of furnishing such a blow dryer mounting device in dressing rooms or bathrooms, especially for commercial applications, such as hotel accommodations. Consequently, on this record, we will sustain the examiner's § 103(a) rejection of claims 7 and 16.

Claims 15 and 17

In addition to the other features of claims 15 and 17 that have been addressed above, claims 15 and 17 require a spray element, trigger and vent apertures for proving a fluid mist. Concerning these latter features, the examiner has turned to Braulke (drawing figures 3-5) to show that providing a hair dryer apparatus with those items for supplying fluid (steam) for wetting the hair to aid in the styling thereof is well known. Consequently, based on the combined teachings of the references that are applied in the separate rejections of claims 15 and 17, we agree with the examiner that a prima facie case of obviousness has been established thereby, which have not been successfully rebutted by appellants' arguments for reasons stated above and in the answer.

As a final point, we note that appellants have not furnished any evidence establishing unexpected results for the claimed hair dryer apparatus.

CONCLUSION

The decision of the examiner to reject claims 1 and 3-5 under 35 U.S.C. § 102(b) as being anticipated by Vallis; to reject claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Vallis in view of Weiss; to reject claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Vallis in view of Scivoletto; to reject claims 7 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Vallis in view of Barr and Sampson; to reject claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Vallis in view of Braulke; to reject claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Vallis in view of Barr, Sampson and Braulke; and to reject claims 8-10 and 12-14 under 35 U.S.C. § 103(a) as being unpatentable over Vallis under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

CHARLES F. WARREN)
Administrative Patent Judge)
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PETER F. KRATZ) BOARD OF PATENT
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